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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,914	04/15/2004	Edmund P. Ashley	MP001-US	7619
24222	7590	06/27/2007	EXAMINER UTAMA, ROBERT J	
MAINE & ASMUS 100 MAIN STREET P O BOX 3445 NASHUA, NH 03061-3445			ART UNIT 3714	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/824,914	ASHLEY ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Robert J. Utama	3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04/15/2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04/15/2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>01/05/2005</u>	6) <input type="checkbox"/> Other: _____

Art Unit: 3714

**DETAIL ACTION*****Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed subject matter "central database", "data station" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 11 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting

Art Unit: 3714

to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: “*item bank*”, “*assessment bank*”, “*user management subsystem*”, “*test publication subsystem*”, “*scoring subsystem*”, “*analysis subsystem*”, “*reporting subsystem*”, “*security subsystem*” and “*system being rule based*” these separate elements are claimed and are part of the essential structure that the applicant need to claim the system as explained in the applicant’s specification. However, in claim 11 these structure elements (or subsystem) are only listed, the current claim language is silent on how these essential component are connected together to form a system that can fulfill the objective of “a system for the administration of jurisdiction wide standardized examination.”

4. Additionally, claim 1-9 and 11 are also rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is directed towards a computer based testing system that comprised among other things of an operational testing system. The examiner cannot determine if the applicant is trying to claim a system that is comprised of itself or is trying to claim to another structural element. Hence, for the purpose of this examination claim 1 limitation of “an operational testing system” is defined to refer to the system used by the examinee to take the exam. Claims 2-9 are also rejected to since they are dependant on a rejected claim. Claim 11 contain the limitations of “an item bank management system” and “an assessment bank management system”. Claim 11 seems to refer to these elements as distinct components of the invention. However, in claim 11 these two subsystems seem to perform the same function. Hence, for the purpose for this examination the examiner will treat the “an item bank management system” and “an assessment bank management system” as a single entity that stores and manage question/examination material to be distributed during the examination.

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claim 11 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 11 recites the limitation of "*item bank subsystem*", "*assessment bank subsystem*", "*user management subsystem*", "*test publication subsystem*", "*scoring subsystem*", "*analysis subsystem*", "*reporting subsystem*", "*security subsystem*" and "*system being rule based*"; however these subsystems do not define any physical structure or physical interrelationship. Instead these subsystems appear to be a listing a computer subsystem or program. Since these subsystems are not tied to any physical structure, these subsystems are deemed to reside within the non-statutory subject matter category. See MPEP 2106.01

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.  
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. **Claim 1-2, 7, 9 and 10 rejected under 35 U.S.C. 102(e) as being anticipated by**

**Greene et al US 2002/0172931.**

**Claim 1 and 10:** Greene provides a teaching for a computer based testing system comprising: a data administration system including a centrally hosted data administration server, a network (and an operational testing system for the examinee (see Greene paragraph 18-20 FIG. 1 item 104, 102 and 108 respectively) and said administration data system includes a browser capable workstation connectible via the network to the centrally hosted data administration servers (see Greene paragraph 43). Greene also provides a teaching that the system also includes: a test delivery server running test delivery workstation and managing all aspect of a test session by acting as a data repository and hub for communication between the other component (see paragraph 34 and 21), proctor software running a proctor test workstation providing a user interface for managing test session by communicating with the test delivery server (see paragraph 19-21) and a student test software running a student test workstation providing a user interface for displaying a test items and recording response (see paragraph 40).

**Claim 2:** While Greene does not explicitly mentions a scalable display system, such that the appearance of a test item is common to all said student workstation within the system. It would have been inherent such that all the workstation in the system would display the same test item (hence the same appearance) should the system is presenting the same test item.

**Claim 7:** Greene provides a teaching wherein the proctor software facilitates the monitoring of at least one student using the student test workstation (see FIG. 5 and paragraph 53).

**Claim 9:** Greene provides a teaching wherein the proctor software facilitates request for assistance by a student to a proctor monitoring said proctor test workstation (see FIG. 5 item 520).

**9. Claim 12 rejected under 35 U.S.C. 102(e) as being anticipated by Pfenninger et al US 2001/0031457.**

Art Unit: 3714

**Claim 12:** Pfenninger provide a teaching of administering a test over a distributed computer network, said method comprising: transmitting a test content to at least one data station from a central database (see paragraph 28), transmitting a test content to at least one testing station couple to said data station, administering the test (see paragraph 29-31), transferring the test result from the test station to the data station, storing the test result on the data station (see paragraph 34) and uploading the test result to the central database for analysis (see paragraph 35-36).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. **Claim 3-4 and 9 rejected under 35 U.S.C. 103(a) as being unpatentable over Greene et al US 2002/0172931 and Pfenninger et al US 2001/0031457.**

**Claim 3:** Greene does not provide a teaching for categorizing the student according to classes. However, Pfenninger provide a teaching of categorizing the student according to classes (or test) that the user is enrolled to take (see paragraph 9, 63-64). Therefore it would have been obvious to one of ordinary skilled in the art to include the feature of categorizing the student according to classes (or test) that the user is enrolled to take, as taught by Pfenninger, into the system of Greene because it allow the test administrator to conveniently monitor the progress of the examinee (see paragraph 64).

**Claim 4:** Greene does not provide a teaching wherein access to the system by a user is limited according to which class said user belongs.

Art Unit: 3714

However, Pfenninger provide a teaching of wherein access to the system by a user is limited according to which class (or test) that the user is enrolled to take (see paragraph 9 and 30). Since the user would be unable to access the test without the test code, and in turn one is unable to obtain the test code without registering for the test. The examiner concludes that this teaching is substantially similar with the limitation of claim 4. Therefore it would have been obvious to one of ordinary skilled in the art to include the feature of limiting the student access to class(es) (or test) that the user is enrolled to take, as taught by Pfenninger, into the system of Greene because it allow the test administrator to conveniently monitor the progress of the examinee (see paragraph 64).

**Claim 8:** Greene does not provides a teaching where the proctor software control the assignment and re-assignment of a student to said student workstation.

However, Pfenninger provide a teaching of system where the proctor software controls the assignment and re-assignment of a student to said student workstation (see paragraph 47-59). Therefore it would have been obvious to one of ordinary skilled in the art to include the feature of the proctor software controls the assignment and re-assignment of a student to said student workstation, as taught by Pfenninger, into the system of Greene because it would allow the proctor to provide the confirmation and ability to present the student with the right material (see Pfenninger paragraph 46).

**12. Claim 5-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Greene et al US 2002/0172931 and Hakim 6,760,748**

**Claim 5:** Greene does not provide a teaching of having a control system whereby access to non-test material by a student using student test workstation is monitored and controlled during the administration of the test.

Hakim provides a teaching where access to non-test material by a student using student test workstation is monitored (Hakim col. 28:25-34) and controlled during the administration of the

Art Unit: 3714

test (Hakim col. 28:1-17). Therefore, it would have been obvious for one of ordinary skilled in the art to include the feature of monitoring and controlling access to non-test material by a student using student test workstation, as taught by Hakim, in order to comply with state and local legislation (see Hakim col. 28:5-7).

**Claim 6:** Greene does not provide a teaching of student is permitted to access a limited part of the worldwide computer network.

Hakim provides a teaching where the student is permitted to access a limited part of the world-wide computer network (see col. 28:55-64). Therefore, it would have been obvious for one of ordinary skilled in the art to include the permitting the use of a limited part of the world-wide computer network, as taught by Hakim, in order to comply with state and local legislation (see Hakim col. 28:5-7).

**13. Claim 11 rejected under 35 U.S.C. 103(a) as being unpatentable over Kershaw et al US 5,565,316, in view of Bejar US 6,295,439 and further in view of Moore US 6,925,601.**

**Claim 11:** Kershaw provides a teaching for the administration of jurisdiction wide standardized examination, which comprised of: an item and assessment bank management which can be accessed and edited by authorized test editors (see Kershaw col. 11:5-18); a user management subsystem whereby an examinee access said system and examination is administered to said examinee, said management subsystem comprised of examinee (see Kershaw col. 4:17-26), teacher/Test Designer (see Kershaw col. 11:5-18), and administrator import and export interface for batch updates and modification (see Kershaw col. 49:55-67 and col. 4:55-65); an analysis and reporting subsystem comprising algorithm for the analysis of the examinee's result (col. Kershaw 26:25-33); a security subsystem whereby a technical administrator can control access to said system (Kershaw col. 4:29-40) and where said system is ruled based and configured to prompt users with a specific steps and enforce the completion

Art Unit: 3714

of said specific steps before proceeding to a next said specific step (see Kershaw FIG. 35 and 36A-L).

Kershaw is silent on the matter of a scoring subsystem whereby a user can manually score open response items, thereby obtaining an examinee's result. However, Bejar provides a teaching of a scoring subsystem whereby a user can manually score open response items, thereby obtaining an examinee's result (see Bejar col. 13:1-21). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of scoring subsystem whereby a user can manually score open response items, thereby obtaining an examinee's result as taught by Bejar into the system of Kershaw in order to allow the system to receive free response and drawing from the examinee (see Bejar col:1:35-45).

Kershaw provides a teaching of an online assessment system that takes item set and applies pre-established method to compile said examination for a distribution method and said group is online distribution method (see Kershaw col. 12:19-32 and col. 30:39-52). However, Kershaw does not provide a teaching of having method of paper distribution of the examination. Moore provides a teaching of having method of paper distribution of the examination (see col. 3:40-67). Therefore it would have been obvious for one of ordinary skilled in the art to include the feature of having method of paper distribution of the examination, as taught by Moore, into the system of Kershaw and Bejar because it would allow the student to response without the use of the computer or looking at the computer screen which can alleviate computer fatigue syndrome.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Utama whose telephone number is (571) 272-1676. The examiner can normally be reached on M-F 9:00-5:30.

Art Unit: 3714

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezutto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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**KATHLEEN MOSSER**  
Primary Examiner  
Art Unit 3714